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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,191	05/03/2007	Isabelle Bossard	RB65	2933
6980 7590 03/02/2011 TROUTMAN SANDERS LLP 5200 BANK OF AMERICA PLAZA 600 PEACHTREE STREET, N.E. SUITE 5200 ATLANTA, GA 30308-2216				
EXAMINER				
SIMPSON, SARAH A				
ART UNIT		PAPER NUMBER		
3731				
NOTIFICATION DATE		DELIVERY MODE		
03/02/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jim.schutz@troutmansanders.com

patents@troutmansanders.com

ellen.walters@troutmansanders.com

# Office Action Summary

**Application No.**

10/560,191

**Applicant(s)**

BOSSARD ET AL.

**Examiner**

SARAH A. SIMPSON

**Art Unit**

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 January 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 14-16 and 21-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 14-16 and 21-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Transposition of Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/27/2011 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. **Claims 1-8, 14-16 and 21-33** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Welt et al. (US 5,984,935)** in view of **Teed et al. (US 2005/0197665 A1)** in view of **Kamemizu (US 6,652,550 B1)**.

**Regarding claim 1**, Welt discloses a non-shaving head (4) which in use is capable of being moved over the skin to effect removal of the composition; a handle (6) having a broadened end distal from the non-shaving head (fig. 7); and a joint between the head and the handle, permitting an articulation of the head about the handle, the joint being defined by an opening oriented upward when used to effect the removal of the composition (fig. 7; column 3, lines 47-53); wherein both the non-shaving head and the handle have a downward concave curvature profile when used to effect the removal of the composition, the downward concave curvature profile of the handle extending along a majority of the length of the handle (fig. 7).

Welt fails to disclose wherein the concave curvature profile of the handle extends continuously along a majority of the length of the handle; wherein the handle is substantially waisted in shape; and wherein the width of the head is at least approximately 50% greater than the maximum width of the handle.

However, Teed teaches a non-shaving head wherein the concave curvature profile of the handle extends continuously along a majority of the length of the handle (figs. 1, 2; [0030]; wherein the handle begins proximal to strap 23); and wherein the width of the head is at least approximately 50% greater than the maximum width of the handle (fig. 3).

Given the teachings of Teed, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Welt with the continuous concave handle of Teed and wherein the width of the head is at least approximately 50% greater than the maximum width of the handle. Doing so provides a comfortable fit in the palm of the user's hand, as disclosed by Teed ([0030]) as well as providing a head with a greater surface area, allowing the user to use less strokes to cover a greater treatment area.

Teed fails to disclose wherein the handle is substantially waisted in shape.

However, Kamemizu teaches a non-shaving head (7) which in use is capable of being moved over the skin to effect removal of the composition; a handle (2) having a broadened end distal from the non-shaving head (figs. 1A-1C) wherein the handle is substantially waisted in shape (figs. 1A-1C); and a joint (elastic portion 5) between the head and the handle, permitting an articulation of the head about the handle; wherein both the non-shaving head and the handle have a downward concave curvature profile when used to effect the removal of the composition (figs. 1C, 2A), the downward concave curvature profile of the handle extending along a majority of the length of the handle (fig. 1C); and wherein the width of the head is at least approximately 50% greater than the maximum width of the handle (figs. 1A, 1B).

Given the teachings of Kamemizu, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Welt in view of Teed wherein the handle is substantially waisted in shape. Doing so provides a comfortable fit in the palm of the user's hand.

**Regarding claim 14**, Welt discloses a non-shaving head (4), the head comprising a planar surface (the blade 10) comprising a flat top surface and a flat under surface, the planar surface ending in a single straight edge (column 3, lines 7-11); a handle (6) having a broadened end distal from the head (fig. 7); and a single joint between the handle and the head having an upward opening that limits articulation of the head with respect to the handle during use in removing compositions (column 3, lines 47-53); wherein both the non-shaving head and the handle have a concave curvature profile relative to the tissue during use, the concave curvature profile of the handle extending along a majority of the length of the handle (fig. 7).

Welt fails to disclose wherein the concave curvature profile of the handle extends continuously along a majority of the length of the handle; wherein the handle is substantially waisted in shape; and wherein the width of the head is at least approximately 50% greater than the maximum width of the handle.

However, Teed teaches a non-shaving head wherein the concave curvature profile of the handle extends continuously along a majority of the length of the handle (figs. 1, 2; [0030]; wherein the handle begins proximal to strap 23); and wherein the width of the head is at least approximately 50% greater than the maximum width of the handle (fig. 3).

Given the teachings of Teed, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Welt with the continuous concave handle of Teed and wherein the width of the head is at least approximately 50% greater than the maximum width of the handle. Doing so provides a comfortable fit

in the palm of the user's hand, as disclosed by Teed ([0030]) as well as providing a head with a greater surface area, allowing the user to use less strokes to cover a greater treatment area.

Teed fails to disclose wherein the handle is substantially waisted in shape.

However, Kamemizu teaches a non-shaving head (7) which in use is capable of being moved over the skin to effect removal of the composition; a handle (2) having a broadened end distal from the non-shaving head (figs. 1A-1C) wherein the handle is substantially waisted in shape (figs. 1A-1C); and a joint (elastic portion 5) between the head and the handle, permitting an articulation of the head about the handle; wherein both the non-shaving head and the handle have a downward concave curvature profile when used to effect the removal of the composition (figs. 1C, 2A), the downward concave curvature profile of the handle extending along a majority of the length of the handle (fig. 1C); and wherein the width of the head is at least approximately 50% greater than the maximum width of the handle (figs. 1A, 1B).

Given the teachings of Kamemizu, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Welt in view of Teed wherein the handle is substantially waisted in shape. Doing so provides a comfortable fit in the palm of the user's hand.

**Regarding claims 21, 22 and 29,** Welt discloses a device for removing a composition, the device comprising: a non-shaving head (4) with a concave profile; a handle (6) having a curvature profile and a broadened end distal from the non-shaving head, the curved profile defining a downward concave curvature that extends along a

majority of the length of the handle (fig. 7); and a joint comprising an upwardly open V-shaped notch between the head and the handle, permitting an articulation of the head about the handle (column 2, lines 47-53).

Welt fails to disclose wherein the concave curvature profile of the handle extends continuously along a majority of the length of the handle; wherein the handle is substantially waisted in shape; and wherein the width of the head is at least approximately 50% greater than the maximum width of the handle.

However, Teed teaches a non-shaving head wherein the concave curvature profile of the handle extends continuously along a majority of the length of the handle (figs. 1, 2; [0030]; wherein the handle begins proximal to strap 23); and wherein the width of the head is at least approximately 50% greater than the maximum width of the handle (fig. 3).

Given the teachings of Teed, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Welt with the continuous concave handle of Teed and wherein the width of the head is at least approximately 50% greater than the maximum width of the handle. Doing so provides a comfortable fit in the palm of the user's hand, as disclosed by Teed ([0030]) as well as providing a head with a greater surface area, allowing the user to use less strokes to cover a greater treatment area.

Teed fails to disclose wherein the handle is substantially waisted in shape.

However, Kamemizu teaches a non-shaving head (7) which in use is capable of being moved over the skin to effect removal of the composition; a handle (2) having a



broadened end distal from the non-shaving head (figs. 1A-1C) wherein the handle is substantially waisted in shape (figs. 1A-1C); and a joint (elastic portion 5) between the head and the handle, permitting an articulation of the head about the handle; wherein both the non-shaving head and the handle have a downward concave curvature profile when used to effect the removal of the composition (figs. 1C, 2A), the downward concave curvature profile of the handle extending along a majority of the length of the handle (fig. 1C); and wherein the width of the head is at least approximately 50% greater than the maximum width of the handle (figs. 1A, 1B).

Given the teachings of Kamemizu, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Welt in view of Teed wherein the handle is substantially waisted in shape. Doing so provides a comfortable fit in the palm of the user's hand.

**Regarding claims 2, 15 and 23,** Welt essentially discloses the device wherein there is a resistance force acting against articulation of the head, which resistance force increases as the articulation increases (column 3, lines 47-53).

**Regarding claims 3 and 24,** Welt essentially discloses the invention wherein the head comprises an articulation about the handle through an angle in the range of 10 to 40° (fig. 7).

**Regarding claims 4 and 25,** Welt essentially discloses the device wherein when the force, causing articulation of the head, is reduced or removed the head is able to recover a previous or original position (fig. 7).

**Regarding claims 5-7 and 26-28**, Welt essentially discloses the device being unitary and made of plastic (column 2, lines 40-44) wherein the handle is substantially rigid, the head is substantially rigid, and the joint is the only source of articulation (column 3, lines 47-53).

**Regarding claims 8 and 16**, Welt essentially discloses the invention wherein the joint is formed by a web of plastic material at the base of an upwardly open notch between the handle and the head (column 2, lines 40-44).

**Regarding claims 30, 32 and 33**, Welt essentially discloses wherein the head has a rigid, non-conforming leading edge that effects the removal of the composition (column 3, lines 7-11; wherein Welt also teaches conforming edges (column 3, lines 34-46); therefore, all other edges are non-conforming and made of rigid plastic).

**Regarding claim 31**, Welt essentially discloses wherein the upward opening closes when a downward force, to effect the removal of the composition, is applied to the handle, and wherein the closure of the upward opening limits the articulation of the head about the handle (fig. 7; column 3, lines 47-53; wherein the opening inherently closes to some extent as the head is moved).

5. **Claim 34** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Welt et al.** (US 5,984,935) in view of **Teed et al.** (US 2005/0197665 A1) in view of **Kamemizu** (US 6,652,550 B1) as applied to the claims above, and further in view of **Fischer et al.** (US 2003/0167582 A1).

**Regarding claim 34**, Welt essentially discloses the invention except for wherein the maximum width of the handle is approximately 22 mm.

However, Fischer teaches a non-shaving head scraping device with a handle having a waisted shape (fig. 1E) wherein the maximum width of the handle is approximately 0.6 in or 15.24 mm ([0065]) or greater if the device is intended to be used by adults ([0062]).

Given the teachings of Fischer, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Welt in view of Teed and Kamemizu wherein the maximum width of the handle is approximately 22 mm. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Further, a greater sized handle would be better suitable for adult user's, as disclosed by Fischer.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-8, 14-16 and 21-34 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARAH A. SIMPSON whose telephone number is 571-270-3865. The examiner can normally be reached on Monday - Friday 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sarah A Simpson/  
Examiner, Art Unit 3731  
2/22/2011

/TODD E. MANAHAN/  
Supervisory Patent Examiner, Art Unit 3776